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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

O.A.No.1052 OF 1996.

DATE OF ORDER: 2.11.1998

Between:

1. Andhra Pradesh Census Electronic
Data Processing Staff Association,
Hyderabad, represented by its
President, L.Nageshwar Rao.

2. S.Krishnama Chary.

.. Applicant

and

1. Union of India, represented by
Secretary, Ministry of Home Affairs,
Central Secretariat, New Delhi.

2. Union of India, represented by
Secretary, Ministry of Finance,
Central Secretariat, New Delhi.

3. Union of India, represented by
Secretary, Ministry of Personnel,
Public Grievances & Pensions,
Department of Personnel and Training,
Central Secretariat, New Delhi.

4. The Director General, National
Informatic Centre, Central Government
Office Complex, Lodhi Road, New Delhi.

5. The Registrar General of India, 2/A,
Mansing Road, New Delhi.

6. The Joint Director of Census Operations,
Andhra Pradesh, Pioneer House, Somajiguda,
Hyderabad.

.. Respondents

COUNSEL FOR THE APPLICANTS :: Mr.J.Sudheer

COUNSEL FOR THE RESPONDENTS :: Mr.N.R.Devaraj

CORAM:

THE HON'BLE SRI H.RAJENDRA PRASAD, MEMBER (ADMN)

AND

THE HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER (JUDL)

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OA. No.1052 OF 1996.

: O R D E R :

(AS PER HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER(JUDL))

None appeared for the applicants. The applicants 1 and 2 were also absent when this OA was taken up for hearing. Heard Sri N.R.Devaraj, learned Standing Counsel for the Respondents.

2. We are deciding this OA on the basis of the material available on record after hearing the learned Standing Counsel for the Respondents in accordance with the Rule 15(1) of the CAT(Procedure) Rules, 1987.

3. Subsequently, at the request of the learned Counsel for the Applicants the OA was posted on 23-10-1998 and 26-10-1998 for being mentioned to. However, the learned Counsel for the applicants remained absent.

4. There are two applicants in this OA. The applicant no.1 is M/s A.P.Census Electronic Data Processing Staff Association, Hyderabad, represented by its President. The President of the Association is working as Data Entry Operator(DEO) Grade-'B'. The applicant no.2 is working as DEO Grade-'A'.

5. The Respondent No.5 has under his control two types of DEOs viz., DEO Grade-'A' and DEO Grade-'B' in the scale of pay of Rs.1150-1500/- and Rs.1350-2200/- (pre-revised) respectively.

6. The case of the applicants is that the duties performed by the DEOs Grade-'A' and Grade-'B' are identical and similar, and that there is no reason for providing

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different scales of pay. They submit that the DEO Grade-'A' must be provided with the scale of pay of Rs.1350-2200/-.

7. Based on the recommendations made by the then IVth Pay Commission, the Department of Electronics examined the recommendation for re-organisation of existing Electronic Data Processing Posts, and to prescribe uniform scales of pay and designation in consultation with the DOPT. In that background Seshagiri Committee was constituted. The Seshagiri Committee, after considering various suggestions and posts in the Department of Electronics, recommended the following categories and scales of pay:-

Sl.No.	Category	Scale of pay
1.	Data Entry Operators - A.	1350-2200
2.	Data Entry Operators - B.	1400-3300
3.	Data Entry Operators - C.	1600-2660
4.	Data Entry Operators - D.	2000-3200
5.	Data Entry Operators - E.	2375-3500

8. The applicants herein have compared their posts with the posts of DEOs in the Railway Administration.

9. It is stated that the Respondent No.2 issued OM dated:11-9-1989 through which the post of DEOs were bifurcated into five grades with different scales of pay. The minimum qualification for the post of DEOs is graduation from a recognised University. However, certain under graduates were performing the duties of DEOs. They were categorised as DEO Grade-AA in the scale of pay of Rs.1150-1500/1320-2040/-.

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10. It is further stated that the Respondent no.3 through OM dated 12-2-1990 (Annexure.5) formulated the Model Recruitment Rules for various categories of Electronic Data Processing posts.

11. The applicants with the similar reliefs had earlier approached this Tribunal in OA.No.329 of 1996 on 8-3-1996. This Tribunal disposed of the said OA directing the Respondent no.1 to consider the representation dated:8-9-1995 submitted by the DEOs working in the Respondent no.5 Organisation.

12. In compliance with that directions given by this Tribunal, the Respondent no.5 considered the representation and by the impugned letter dated:11-6-1996 rejected the claim of the applicants for granting the scale of pay of Rs.1350-2200/- to the DEO Grade-'A'. It is stated in the impugned letter that DEO Grade-'A' and 'B' are two separate posts in EOP cadre having separate scales of pay and different recruitment rules. Though the minimum prescribed speed of Data Entry Work i.e., Kdph is the same for both the posts, the educational qualifications prescribed in the recruitment rules are different for the two posts. Hence, a 12th Standard passed candidate cannot expect to straight away get the scale of pay allotted to a graduate in the DEO Grade-'B'. It is further stated that just because some DEO operators have the qualification of graduation, it does not entitle the scale of pay of the higher post of Grade-'B' because they knowing fully well of the educational qualification prescribed for DEO Grade-'A' applied for and got selected for the post of DEO Grade-'A', in the lower pay scale. The post of DEO grade-'B' is to be rationalised as a promotional post in the lower post of

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DEO Grade-'A'. The Recruitment Rules for the post of DEO Grade-'B' were notified during the year 1991 itself while the post of DEO Grade-'A' were created during the year 1993. Therefore, the recruitment rules for the post of DEO grade-'B' did not have a provision for promotion. However, a proposal for the amendment of the rules for providing promotional avenue from the feeder grade of DEO Grade-'A' is under consideration.

13. It is further stated that the cadre structure and service conditions as well as the duties and responsibilities in this Department and the Railway Administration cannot be identical and, therefore, inter-departmental comparison is not sustainable. The post in this Department have been sanctioned based on the specific job requirement and structure of the Department. Thus the claim of the applicants for providing the scale of pay of Rs.1350-2200/- to the DEO Grade-'A' was rejected.

14. Being aggrieved, the applicants have filed this DA praying to declare the action of the respondents in issuing the Proceedings No.18/6/96-AD-II, dated:11-6-1996 through which the claim of the DEO Grade-'A' in the scale of pay of Rs.1350-2200/- has been rejected even though the DEO Grade-'A' are performing similar work like DEO Gr.'B', as illegal, arbitrary, illogical, irrational, discriminatory and violative of Articles 14, 16, 21 and 39(d) of the Constitution of India.

15. The applicants have challenged the impugned letter dated 11-6-1996 as illegal. That letter is cryptic and does not answer the various contentions raised by them in DA.No.329 of 1996. That the impugned letter has been

issued mechanically and without application of mind. That it was not open for the Respondent No.5 to reject the claim of the applicants on the ground that their duties cannot be compared with the duties of the DEOs working in the Railway Administration, that the DEOs Grade-'A' and Grade-'B' are performing identical and similar nature of work, that no specific job charts have been formulated for the DEOs Grade-'A' and 'B'. They have produced the job chart at Annexure.13. Thus they contend that the impugned Order is liable to be quashed.

16. The respondent no.6 has filed the reply to the OA. It is stated that the Directorate of Census Operations in A.P. has the following posts in the scale of pay noted against them:-

D.E.Operator Grade-'A' (63 posts)	: Rs.1150-1500/-
D.E.Operator Grade-'B' (72 posts)	: Rs.1350-2200/-
Junior Supervisor (18 posts)	: Rs.1400-2300/-
Senior Supervisor (6 posts)	: Rs.1640-2900/-

17. They submit that in accordance with the model recruitment rules, the minimum qualification prescribed for the post of DEO Grade-'A' is, a pass in 12th Standard or its equivalent with a speed of 8000 KDPH, and that for the post of DEO Grade-'B' the minimum qualification is a graduate from a recognised University with 8000 KDPH, for data entry work on EDP Machines.

18. They submit that during the year 1993, 63 posts of DEO Grade-'A' were sanctioned.

19. They dispute the status of the applicant no.1 who claims to be the President of the Association. They submit that the Association is not a recognised Association.

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and that the applicant no.1 is not authorised to file this OA on behalf of the DEOs working in the Department.

20. They submit that as per the OM No.F.7(1)/IC/86(44), dated:11-9-1989 revised pay structure and rationalising the pay scales in respect of EDP posts in the Central Government Departments, the pay of DEO Grade-'B' was revised to the scale of pay of Rs.1350-2200/-, that at that time some of the DEOs Grade-'B' had approached this Tribunal in OA.No.957 of 1990 for implementing the re-structured scheme retrospectively from 1-1-1986, that the applicants succeeded in their OA and accordingly they were given the restructured benefits of revised pay with retrospective effect from 1-1-1986, that for attending to the 1993 Census Operations, 63 posts of DEO Grade-'A' in the scale of pay of Rs.1150-1500/- were sanctioned as per the Registrar General's letter No.3/1/93/RG(AD-II), dated:7-7-1993, that accordingly, the said posts were filled up by direct recruitment, that some of the graduates also responded and were selected likewise, the applicant no.2, who was a graduate. The applicant no.2 knowing fully well applied to the post of DEO Grade-'A' and was selected and that he cannot ask for the scale of pay of Rs.1350-2200/-, which is assigned to DEO Grade-'B'.

21. They submit that the cadre structure and service conditions, duties and responsibilities attached to the various posts in the Directorate of Census Operations cannot be compared with the cadre structure service conditions and duties and responsibilities of the persons similarly situated in the Railway Administration, that posts in the Census Department were sanctioned based on the specific job requirement and structure of the Department, that it is for the Department to create the grades

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which are necessary to suit their requirements, that the existing posts of DEO Gr.'B' in the scale of pay of Rs.1350-2200/- and some posts in the category of DEO Gr.'A' in the scale of pay of Rs.1150-1500/- were created afresh during the year 1993 on the basis of the requirements of the Department, that the recruitment rules for the post of DEO Gr.'B' were already in existence in 1991 itself, that the minimum qualification prescribed for the post of DEO Gr.'B' and the post of DEO Gr.'A' are quite different, that a proposal has been made for providing a promotional avenue from the post of DEO Gr.'A', that the same is under consideration, that the applicants cannot claim higher scale of pay of Rs.1350-2200/- to the post of DEO Gr.'A', that earlier the applicant no.1 had approached this Tribunal in OA.No.482 of 1994, that the decision in the said OA has no relevance to the present case, that the applicants had filed OA.No.329 of 1996, that as per the directions given in the said OA, the department considered the representation of the applicants and issued the impugned letter dated: 11-9-1996, that they took into consideration the various contentions raised by the applicants in their representation, that the department felt not possible to accept the claim of the applicants for granting the scale of pay of Rs.1350-2200/- to the post of DEO Gr.'A', that the Department has analysed various rules and provisions in the impugned letter and that the posts have been created in the cadre of Group- 'A' in accordance with the requirement of the department and that the impugned letter dated 11-6-1996 does not suffer from illegality or irregularity and the OA is, therefore, liable to be dismissed.

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22. The applicants herein are aggrieved by the impugned letter dated 11-6-1996 (Annexure.12, page.65 to the OA), wherein their claim for grant of scale of pay Rs.1350-2200/- to the cadre of DEO Gr.'A' has been rejected. The respondents considered their representation in accordance with the directions given by this Tribunal in OA.No.329 of 1996, decided on 8-3-1996.

23. The applicants submit that the 4th respondent evolved job description to the various categories of Operators in the Census Department and that the posts of DEO Gr.'A' are not at all necessary in the Directorate and that the respondents have unnecessarily and with a view to lessen the financial burden, have created the post of DEO Gr.'A' in the scale of Rs.1150-1500/-, that the post of the DEO Gr.'A' are, infact, performing the duties similar to those of the duties attached to the DEO Gr.'B'.

24. They submit that the DEOs Grade-'A' have no work in the Department of Census Operations. They submit that the respondents are extracting the work of DEO Gr.'B' from the DEO Grade-'A'. Thus they submit that the respondents have unnecessarily created the posts^{of} DEO Grade-'A' in the respondent-Department.

25. It is the contention of the respondents that they created the post of DEO-Gr.'A' in the scale of pay of Rs.1150-1500/- taking into consideration the job requirements of the Department. Creation or abolition of posts or restructuring of the post is entirely the prerogative of the executive. The Court or the Tribunal cannot direct the Department to create a post or cadre or to abolish the post in particular cadre. It is for the Department to

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ascertain the requirement of the posts and also more than anything else the financial constraint that may have to be undertaken by the Department in creating the posts. The respondents had stated that during 1993 Census Operations certain posts of DEO Grade-'A' were created. They submit that they did so having regard to the job requirement of the office. When that is so, we cannot find any illegality or irregularity in the Department creating 63 posts of DEO Grade-'A' in the scale of pay Rs.1150-1500 during 1993.

26. The applicants have compared their duties with DEOs working in the Railway Administration. On perusal of the OA, we are unable to come to the definite conclusion whether the applicants can compare the duties and responsibilities attached to them in the respondent Department with that of the duties and responsibilities of the DEOs working in the Railway Administration. In the absence of any material facts or data, it is impossible to say that the applicants are performing the duties and responsibilities similar to that of those working in the Railway Administration.

27. In this connection, we feel it proper to refer to the observations made by the Hon'ble Supreme Court of India in the case of STATE OF HARYANA & OTHERS Vs JASMER SINGH & OTHERS (reported in 1997(1) SLR P.143). Paras 5 to 8 are relevant in this respect. We reproduce the said paras hereinbelow:-

"5. The principle of 'equal pay for equal work' is not always easy to apply. There are inherent difficulties in comparing and evaluating work done by different persons in different organisations, or even in the same Organisation. The

principle was originally enunciated as a part of the Directive Principles of State Policy in Article 39(d) of the Constitution. In the case of Randhir Singh v. Union of India and others, 1982(1) SCC 618:(1982(1)SLR 756(SC)), however, this Court said that this was a constitutional goal capable of being achieved through constitutional remedies and held that the principle had to be read into Articles 14 and 16 of the Constitution. In that case a Driver-constable in the Delhi Police Force under the Delhi Administration claimed equal salary as other Drivers and this prayer was granted. The same principle was subsequently followed for the purpose of granting relief in Dhirendra Chamoli and another V. State of U.P.(1986(1)SCC 637) and Jaipal and others v. State of Haryana and others, (1988(3)SCC 354): (1988(2) SLR 710(SC)). In the case of Federation of All India Customs and Central Excise Stenographers(Recognised) and others v. Union of India and others(1988 3 SCC 91):(1988(2) SLR 721(SC)), however, this Court explained the principle of 'equal pay for equal work' by holding that differentiation in pay-scales among government servants holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. In that case different pay-scales fixed for Stenographers(Grade I) working in the Central Secretariat and those attached to the heads of subordinate offices on the basis of a recommendation of the Pay Commission was held as not violating Article 14 and as not being contrary to the principle of 'equal pay for equal work'. This Court also said that the judgment of administrative authorities concerning the responsibilities which attach to the post, and the degree of reliability expected of an incumbent, would be a value judgment of the concerned authorities which, if arrived at bonafide, reasonably and rationally, was not open to interference by the Court.

6. In the case of State of U.P. and others v. J.P. Chaurasia and others (1989 1 SCC 121): (1989(5) SLR 788(SC)) this Court again sounded a note of caution. It pointed out that the principle of 'equal pay for equal work' has no mechanical application in every case of similar work. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who are left out. Of course, these qualities or characteristics must have a reasonable relation to the object sought to be achieved. In the case before the Court, the Bench Secretaries in the High Court of Allahabad claimed the same pay as Section Officers. While negativing this claim, the court said that in service matters merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. That apart, a higher pay-scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. It observed that although all Bench Secretaries may do the same work, their quality of work may differ. Bench Secretaries (Grade I) are selected by a Selection Committee on the basis of merit with due regard to seniority. A higher pay-scale granted to such Bench Secretaries who are evaluated by competent authority cannot be challenged.

7. In the case of Mewa Ram Kanojia v. All India Institute of Medical Sciences and others (1989 2 SCC 235): (1989(2) SLR 37(SC)), a classification based on difference in educational qualifications was held as justifying a difference in pay-scales. This Court further observed that the judgment of the Pay Commission in this regard relating to the nature of the job, in the absence of material to the contrary, should be accepted. Referring to these decisions, this Court in the case of Harbans

Lal and others v. State of Himachal Pradesh and others (1989 4 SCC 459):(1989(5)SLR 774 (SC)) summed up the position by stating that a mere nomenclature designating a person as a Carpenter or a Craftsman was not enough to come to the conclusion that he was doing the same work as another Carpenter in regular service. In that case, Carpenters employed by the Himachal Pradesh Handicraft Corporation on daily wages sought parity of wages with Carpenters in regular service. This Court negatived this contention, holding that a comparison cannot be made with counterparts in other establishments with different management or even in the establishments in different locations though owned by the same management. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of 'equal pay for equal work' requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It must be left to be evaluated and determined by an expert body. The latest judgment pointed out in this connection is the decision in the case of Ghaziabad Development Authority and others v. Vikram Chaudhary and others (1995 5 SCC 210):(1995(4) SLR 582(SC)).

8. It is, therefore, clear that the quality of work performed by different sets of persons holding different jobs will have to be evaluated. There may be differences in educational or technical qualifications which may have a bearing on the skills which the holders bring to their job although the designation of the job may be the same. There may also be other considerations which have relevance to efficiency in service which may justify differences in pay-scales on the basis of criteria such as experience and

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seniority, or a need to prevent stagnation in the cadre, so that good performance can be elicited from persons who have reached the top of the pay-scale. There may be various other similar considerations which may have a bearing on efficient performance in a job. This Court has repeatedly observed that evaluation of such jobs for the purposes of pay-scale must be left to expert bodies and, unless there are any malafides, its evaluation should be accepted."

28. In view of the Principles enunciated by the Hon'ble Supreme Court of India, we have no hesitation to reject the contention of the applicant, that they are discharging the duties similar to those working in the Railway Administration. Further Court or Tribunal is not the proper body to compare the duties performed by the Officers from particular department with that of Officers from other department.

29. The respondents in their impugned letter have clearly explained the circumstances under which the claim of the applicant for grant of scale of pay of Rs.1350-2200/- to the post of DEO Gr.'A' has been rejected. They have placed the recruitment rules, qualification and also duties and responsibilities. The impugned letter clearly states the rule position. They have submitted that they are contemplating amendment to the recruitment rules to provide promotional avenue to the DEO Grade-'A' to the cadre of DEO Grade-'B'. We hope and trust that the respondents do create promotional avenues to the DEO Grade-'A', so that the persons holding the posts of DEO Grade-'A' may not feel

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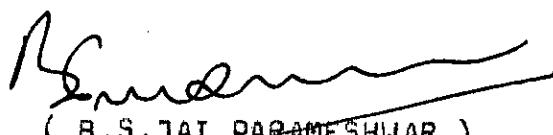
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frustrated, as some persons, in the grade it is submitted are graduates.

30. In that view of the matter, we do not find any reasons to interfere with the impugned letter dated: 11-6-1996. The applicants cannot claim the scale of pay Rs.1350-2200/- to the post of DEO Grade-'A' working in the respondent-department.

31. We find no merits in this OA and the OA is liable to be dismissed.

32. Accordingly, the OA is dismissed leaving the parties to bear their own costs.


(B.S.JAI PARAMESHWAR)

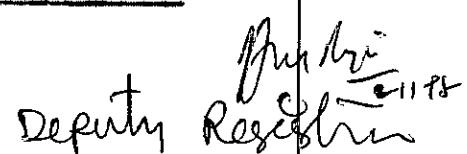
MEMBER (JUD)


(H.RAJENDRA PRASAD)

MEMBER (ADMN)

Dated: 2nd November 1998

DSN


Deputy Registrar
B.R.P. 2-11-98

O.A. 1052/96

To

1. The Secretary, Ministry of Home Affairs,
Union of India, Central Secretariat, New Delhi.
2. Secretary, Ministry of Finance,
Union of India, Central Secretariat,
New Delhi.
3. The Secretary, Ministry of Personnel,
Union of India, Public Grievances &
Pensions, Dept.of Personnel and Training,
Central Secretariat, New Delhi.
4. The Director General, National Informatic Centre
Central Govt. Office Complex, Lodhi Road, New Delhi.
5. The Registrar General of India, 2/A
Mansingh Road, New Delhi.
6. The Joint Director of Census operations,
A.P.Pioneer House, Somajiguda, Hyderabad.
7. One copy to Mr.J.Sudheer, Advocate, CAT.Hyd.
8. One copy to Mr.N.R.Devraj, Sr.CGSC. CAT.Hyd.
9. One copy to HBSJP.M.(J)CAT.Hyd.
10. One copy to DR(A) CAT.Hyd.
11. One spare copy.

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10/11/98
TYPED BY
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I COURT
COMPARED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE D.H.NASIR:
VICE-CHAIRMAN

AND

THE HON'BLE MR.H.RAJENDRA PRASAD:M(A)

Hon'ble Mr. B.S.Jaiparaneswar M(1)

DATED: 2-11-1998.

ORDER/JUDGMENT

M.A/R.A./C.R.NO.

in

O.A.No.

1052196.

T.A.No.

(W.P.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

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